

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2004-023204

02/13/2007

HON. PAUL A KATZ

CLERK OF THE COURT
W. Bobrowski
Deputy

RAFIK Y KAMELL

STEPHEN M HOPKINS

v.

GOOD SAMARITAN REGIONAL MEDICAL
CENTER, et al.

MATTHEW F WINTER
CYNTHIA D STARKEY

UNDER ADVISEMENT RULING

The Court having taken Defendant Larry Leverett, M.D.'s Motion for Summary Judgment under advisement; having reviewed the memoranda of the parties and legal authorities cited therein; and good cause appearing,

IT IS ORDERED denying Defendant Larry Leverett, M.D.'s Motion for Summary Judgment. This Court finds that A.R.S. §12-2604 is unconstitutional to the extent that it purports to designate who may testify as an expert witness, usurping the role of the Court pursuant to Rule 702 of the Arizona Rules of Evidence.

This Court is unconvinced that either an oral or plastic surgeon is qualified to render an expert opinion regarding the cause of Youseff Kamell's death, therefore:

IT IS FURTHER ORDERED that an offer of proof pursuant to Rule 103(a)(2) of the Arizona Rules of Evidence must be made, establishing that Plaintiff's expert is competent to make expert opinions on the standard of care of cause of death of Youseff Kamell before

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Plaintiff's expert may testify to either the standard of care at issue of the cause of Youseff Kamell's death.

Rule 702 provides that "a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify..." Ariz. R. Evid. This Court has every reason to believe that both a board certified plastic surgeon and a oral and maxillofacial surgeon are presumptively equally well qualified to render standard of care opinions as regards the surgical procedure to which Plaintiff was subject.